FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 2 1946
CHARLES ELMORE CROPLEY
CLERK

No. [redacted] 23

In the Supreme Court of the United States

OCTOBER TERM, 1945

TAZE HAMRICK GIBSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Summary of argument	6
Argument:	
I. Having been accepted as a member of the civilian public service camp to which he was assigned, petitioner had the duty to remain at the camp and to perform work of national importance until he was lawfully discharged. Misclassification is no defense to a prosecution for having failed to perform that duty	8
1. Petitioner's status under the Selective Service Regulations	11
2. Petitioner's duties	18
3. The Government's position	27
II. Venue was properly laid in the judicial district in which the civilian public service camp was located	29
Conclusion	32
Appendix A	33
Appendix B	38
Appendix C	53
Appendix D	59
Appendix E	61

CITATIONS

Cases:	
Aderhold v. *Soileau*, 67 F. 2d 259	26
Bayless v. *United States*, 141 F. 2d 578, certiorari denied, 322 U. S. 748	25
Billings v. *Truesdell*, 321 U. S. 542	9, 11, 16
Brooks v. *United States*, 147 F. 2d 134, certiorari denied, 324 U. S. 878	12
Carver, In re, 142 Fed. 623	25
Dillingham v. *Booker*, 163 Fed. 696	25
Estep v. *United States*, No. 292, Oct. Term, 1945	9, 18, 19
Falbo v. *United States*, 320 U. S. 549	8, 13, 15, 19
Giese v. *United States*, 143 F. 2d 633, affirmed, 323 U. S. 682	26
Gormly v. *United States*, No. 220, October Term, 1943	12
Haas v. *Henkel*, 216 U. S. 462	30
Hirabayashi v. *United States*, 320 U. S. 81	28
Humes v. *Pescor*, 148 F. 2d 127	31

677773—46——1

Cases—Continued — Page

Kerekes, Ex parte, 274 Fed. 870 — 24
Kramer v. *United States*, 147 F. 2d 756, certiorari denied, 324 U. S. 878 — 12
Romano, Ex parte, 251 Fed. 762 — 24
Roodenko v. *United States*, 147 F. 2d 752, certiorari denied, 324 U. S. 860 — 12
Rumely v. *McCarthy*, 250 U. S. 283 — 31
Scott, In re, 144 Fed. 79 — 25
Smith v. *United States*, No. 66, October Term, 1945 — 9, 14, 18, 19, 29
Standard Oil Company v. *Johnson*, 316 U. S. 481 — 12
Tinkoff, Ex parte, 254 Fed. 912 — 24
United States v. *Anderson*, 60 F. Supp. 649, No. 447, October Term, 1945 — 30
United States v. *Jerome*, 130 F. 2d 514, certiorari denied, 317 U. S. 606 — 25
United States v. *Johnson*, 323 U. S. 273 — 8, 29
United States ex rel Bodenstein v. *Nichols*, 151 F. 2d 155 — 23
United States ex rel Laikund v. *Williford*, 220 Fed. 291 — 25
United States ex rel Zucker v. *Osborne*, 147 F. 2d 135, certiorari denied, June 18, 1945 — 12, 23
United States v. *Van Den Berg*, 139 F. 2d 654 — 31
Ver Mehren v. *Sirmyer*, 36 F. 2d 876 — 24
Williams v. *North Carolina*, 325 U. S. 226 — 29

Constitution and Statutes:

Constitution, Art. III, Sec. 2, cl. 3 — 30
The Selective Training and Service Act of 1940 as amended (Acts of September 16, 1940, c. 720, 54 Stat. 885; August 18, 1941, c. 362, 55 Stat. 626; December 20, 1941, c. 602, 55 Stat. 844; November 13, 1942, c. 638, 56 Stat. 1018, 50 U. S. C. Appendix 301–318):
Sec. 5 (g) — 11, 16, 33
Sec. 10 (a) (1), (2) — 11, 34
Sec. 11 — 11, 36
18 U. S. C. 753 h — 25

Selective Service Regulations:

605.51 — 38
621.1 (a) — 38
621.3 — 39
622.44 (a) — 39
(c) — 39
622.51 (a) — 39
(b) — 40
(c) — 40
(d) — 40
(e) — 40
627.25 (a) — 41
(b) — 42
(c) — 42

Selective Service Regulations—Continued	Page
629.1 (a)	14, 42
629.2 (a)	14, 43
(b)	43
(c)	43
(d)	44
(e)	44
629.32	14, 44
652.1 (a)	14, 44
652.2 (a)	14, 45
652.11(a) (1)	6, 15, 20, 46
(2)	46
652.12 (a)	47
652.13	15, 17, 47
652.14	6, 20
653.1 (a)	11, 48
(b)	48
(c)	48
653.2 (a)	11, 48
(b)	48
(c)	49
653.5	49
653.11 (a)	49
(b)	50
(c)	15, 16, 17, 50
(d)	50
653.12	6, 15, 17, 19, 20, 21, 24, 25, 51
691.17 (a)	6, 15, 20, 51
(c)	15, 51
(d)	22, 28, 52
Miscellaneous:	
C. M. 122312, Grant (1918) Sec. 2238, Digest of Opinions, JAG, Volume 1912–1930	24
Executive Order 8675	59
JAG 327.3	24
JAG 334.4	24
Manual for Courts-Martial, United States (1928), p. 199	25
Order No. 57 of the Director of Selective Service	61
Selective Service in Peacetime, 1940–1941, pp. 185–201	12
Selective Service in Wartime, 1941–1942, pp. 252–272	12
Selective Service as the Tide of War Turns, 1943–1944, pp. 177–190	12

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 221

TAZE HAMRICK GIBSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the circuit court of appeals (R. 93–95) is reported at 149 F. 2d 751.

JURISDICTION

The judgment of the circuit court of appeals was entered on June 15, 1945 (R. 96). The petition for a writ of certiorari was filed on July 13, 1945, and was granted on October 22, 1945 (R. 101). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

QUESTION PRESENTED

Petitioner claimed exemption from military service (1) as a minister of religion and (2) as a conscientious objector to all military service. His claim to exemption as a conscientious objector was recognized by his board of appeal and he was classified IV-E and was assigned to a Civilian Public Service Camp for work of national importance in lieu of military service. Five days after petitioner was accepted at the camp he permanently absented himself from the camp without authority. The principal question presented is whether in a prosecution under Section 11 of the Selective Training and Service Act for deserting from the camp he was entitled to show as a defense that he should have been classified as a minister of religion.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940, as amended, are set forth in Appendix A, *infra*, pp. 33–37. The Selective Service Regulations, in pertinent part, are set forth in Appendix B, *infra*, pp. 38–52.

STATEMENT

Petitioner was indicted (R. 2–3)[1] in the United States District Court for the District of South Dakota in one count charging a violation of

[1] The designation "R." refers to the transcript of the proceedings in the courts below, and the designation "Ex." to the volume of exhibits filed with the transcript.

the Selective Training and Service Act of 1940. The indictment alleged that pursuant to his claim that he was a conscientious objector to all war, petitioner was classified in IV–E and assigned to a Civilian Public Service Camp; that he reported and was enrolled in the camp; and that on August 28, 1944, he failed to comply with the Selective Service Regulations applicable to registrants assigned to Civilian Public Service Camps in that he permanently absented himself from the camp without authority, in violation of Section 11 of the Act. Having waived a jury trial (R. 29), he was convicted by the court and was sentenced to imprisonment for a term of five years (R. 24–25). Upon appeal to the Circuit Court of Appeals for the Eighth Circuit, the judgment was affirmed (R. 96).

The evidence adduced at the trial, as to which there is no substantial dispute (see R. 29–30), consisted of pertinent documents in petitioner's Selective Service file and oral testimony which may be summarized as follows:

On June 30, 1942, petitioner registered under the Selective Training and Service Act of 1940, with Local Board A, El Dorado, Arkansas (R. 44–45, 64). On October 12, 1942, he filed with the board the Selective Service questionnaire (Ex. 1–8). In that document he stated, *inter alia,* that he was twenty years of age; that he had completed eight years of elementary school

and one year of high school; that from 1934 to 1940 he was a farm laborer; that he had been a minister of religion of the Jehovah's Witnesses sect since June 1938; that he was ordained September 9, 1938; and that he was a conscientious objector to war. At the same time, petitioner claimed classification as a conscientious objector by filing a special form for conscientious objectors (Ex. 37–40; R. 69, 76), in which he asserted conscientious objections to both combatant and noncombatant military service because of his religious beliefs.

On November 6, 1942, the local board by unanimous vote (Ex. 8) classified petitioner I–A (available for military service). He appealed to the board of appeal, and on May 8, 1943, that board by unanimous vote, recognizing petitioner's claim that he was conscientiously opposed to all warfare, classified him IV–E (conscientious objector to both combatant and noncombatant service) (Ex. 8). Petitioner was thereafter physically examined and found acceptable for service and he was thereupon ordered to report for work of national importance, as Section 5 (g) of the Act (*infra*, pp. 33–34) requires (R. 45, 69–70). The order stated that he had been accepted for work of national importance and that he was to report to his local board for transportation to Civilian Public Service Camp No. 57, Hill City, South Dakota (see *infra*, pp. 61–62); and it further advised petitioner that it was his duty "to

remain in the camp, and to perform your prescribed duties until such time as you are released or transferred by proper authority" (Ex. 10).

Consistently with the order, petitioner reported to the local board and was furnished transportation to the camp (R. 70). He arrived there on August 23, 1944, at which time he was assigned a bunk and was otherwise "enrolled" (R. 30, 33, 45; Ex. 10, 21; *infra* p. 17, fn. 8). He underwent the usual conditioning period for all enrollees (R. 35; see Ex. 23). On August 28 he was given the routine examination by the camp doctor which all new members of the camps receive and was found physically fit (R. 38, 70; Ex. 22). On the same date petitioner handed the camp director a letter (R. 38; Ex. 26–27) stating, *inter alia*, that he was a minister of religion and that he would refuse to perform work at the camp. In an interview with the camp director petitioner explained to him that he had reported to the camp "only to exhaust the administrative process" (R. 75). He was advised by the director that the Selective Service Regulations required him to remain at the camp but he left the camp on that day without permission and did not return (R. 39, 46, 77). In a subsequent statement to an F. B. I. agent, petitioner stated that he left the camp w th the intention of permanently remaining away from the camp and that he

677778—46——2

understood that by his conduct he was violating the Selective Service Regulations (R. 46).

Petitioner sought in defense to the indictment to show that he was a minister of religion and that the failure of the Selective Service System so to classify him demonstrated that he had been arbitrarily classified, in violation of the Fifth Amendment. His proffered proof, which was rejected by the trial court (see R. 48–59, 66–69), consisted of various documents in his Selective Service file and of independent testimony calculated to show that he was a regularly practicing minister of religion.

SUMMARY OF ARGUMENT

I

Petitioner's asserted defense, which the trial court rejected, that he should have been classified as a minister of religion, is irrelevant to the charge of the indictment that he deserted from a Civilian Public Service Camp of which he was a member. The Selective Service Regulations (sec. 653.12; see also secs. 652.11 (a), 652.14, 691.17) impose on every person classified IV–E and assigned to a Civilian Public Service Camp the unqualified duty to remain in the camp and perform work of national importance until he is lawfully released from the camp. The duty extends as well to a registrant who believes himself misclassified as it does to all others at the camp.

The policy underlying the regulations contemplates that a member of a Civilian Public Service Camp may undertake to challenge his selective service classification either by seeking administrative relief through the Director of Selective Service or by resorting to habeas corpus, but that he may not defy the Act and regulations. Its objective plainly is to require a registrant to proceed in an orderly manner and to avoid placing him in a position, such as petitioner's, whereby if his challenge is unsuccessful he must be sent to prison as a convicted felon.

As we show in the Argument, the policy of the regulations that a registrant may not defy the camp authorities because he is not satisfied with his classification is neither novel nor of substantial prejudice to petitioner. Having wilfully refused to perform the duties imposed upon him by the regulations, petitioner may not excuse that failure by urging that the duties ought not to have been imposed upon him. Until he was lawfully relieved of his duties, it was his obligation to perform them.

II

The only act for which petitioner was prosecuted—deserting from a Civilian Public Service Camp—occurred at the camp when petitioner left the camp without authority. Applying the established rule that in the absence of a specific venue provision in the statute involved, venue shall be

laid in the district in which the criminal act occurred, there can be no question that petitioner was properly prosecuted in the District of South Dakota where the Civilian Public Service Camp is located. *United States* v. *Johnson*, 323 U. S. 273, relied upon by petitioner as requiring that he should have been prosecuted in the district in which his local board is located, was concerned with the question of venue when the criminal act extends beyond the confines of one judicial district; in this case the criminal act occurred only in the district in which petitioner was prosecuted.

I

HAVING BEEN ACCEPTED AS A MEMBER OF THE CIVILIAN PUBLIC SERVICE CAMP TO WHICH HE WAS ASSIGNED, PETITIONER HAD THE DUTY TO REMAIN AT THE CAMP AND TO PERFORM WORK OF NATIONAL IMPORTANCE UNTIL HE WAS LAWFULLY DISCHARGED. MISCLASSIFICATION IS NO DEFENSE TO A PROSECUTION FOR HAVING FAILED TO PERFORM THAT DUTY

This case presents a novel aspect of the question whether a selective service registrant may challenge the propriety of his selective service classification as a defense to an indictment charging that he knowingly failed to perform a duty required of him by the Selective Training and Service Act or the Selective Service Regulations. In *Falbo* v. *United States*, 320 U. S. 549, the Court held that misclassification was no defense for a registrant who was classified I–A (available for military service) and who failed to report for induction, or for a registrant who [illegible] classified

IV–E (conscientious objector to both combatant and noncombatant military service) and who failed to report for work of national importance. In *Smith* v. *United States*, No. 66, and *Estep* v. *United States*, No. 292, the Court has under consideration the question whether misclassification is a defense for a registrant who refused to submit to induction into the armed forces. This case presents a third category, namely, whether a registrant who has been classified IV–E and who has reported to the Civilian Public Service Camp to which he was assigned and has been accepted by the camp director may challenge the propriety of his selective service classification in a prosecution for having thereafter deserted from the camp.[2]

Relying upon the reasoning advanced by the defendants in the *Smith* and *Estep* cases, petitioner urges that since he reported to the camp and was accepted by the camp director, there can be no question that he fully completed the administrative process, and he argues that he therefore was entitled to challenge the propriety of his selective service classification in the criminal trial. We think he misconceives the nature of the problem presented by this case. The instant case, unlike the *Smith* and *Estep* cases, does not involve a pros-

[2] In *Billings* v. *Truesdell*, 321 U. S. 542, the Court found that the registrant had never been inducted into the Army and thus had no occasion to consider the nature of duties which would have been his if he had submitted to induction.

ecution for having refused to report for, or submit to, induction. Those cases would resemble the instant one only if Smith and Estep had submitted to induction and then deserted from the armed forces.

It is our belief that the trial court properly declined to permit petitioner to challenge his selective service classification, not because petitioner was for any reason not entitled to assert an otherwise valid defense, but because the asserted impropriety of the classification was not a defense to the offense charged against petitioner. As we shall demonstrate in the discussion which follows (see *infra*, pp. 18–27), the Selective Service Regulations impose on every person classified IV–E and assigned to a Civilian Public Service Camp the unqualified duty to remain in the camp and perform work of national importance until he is lawfully released from the camp. There is no condition precedent to the imposition of the duty that the registrant shall have been properly classified IV–E; rather, the duty extends to all registrants who, in the course of the Selective Service procedure, are classified IV–E and who have been assigned to a Civilian Public Service Camp. In our view, petitioner was free to seek his release from the camp administratively or to resort to habeas corpus, but under no circumstances was he free, in view of the duty imposed upon him, to desert from the camp. It is no defense to a

breach of the duty imposed by the Selective Service Regulations to demonstrate, as petitioner sought to do in the trial court, that he should have been classified differently.

1. *Petitioner's status under the Selective Service Regulations.*—Section 5 (g) of the Selective Training and Service Act (*infra*, p. 33) exempts from the obligation to perform military service all registrants found to be conscientiously opposed to both combatant and noncombatant military service, and it provides that "any such person claiming such exemption" shall, in lieu of induction into the armed forces, "be assigned to work of national importance under civilian direction." The Act does not create a Civilian Public Service Camp System but, instead, leaves the execution of the congressional policy to the President (sec. 5 (g)). And, it is to be noted, it contains no provisions relating to an induction procedure by which such persons are assigned to work of national importance, in contrast to the Bone Amendment (constituting the last two sentences of Section 11) in respect of inductees (see *Billings* v. *Truesdell*, 321 U. S. 542). The Civilian Public Service Camp System has been established by the Director of Selective Service (see Reg. 653.1–653.2) in the exercise, as the delegatee of the President (*infra*, pp. 59–60), of the power conferred on the President by Section 10 (a) (1) of the Act "to prescribe the necessary rules and regulations to carry out the provisions"

of the Act.[3] And the rights and duties of persons assigned to such camps are defined by the regulations promulgated by the director, regulations which have the force of law. *Standard Oil Company* v. *Johnson*, 316 U. S. 481, 484.[4] Thus, petitioner's status, his rights and duties, are to be ascertained from the appropriate selective service regulations.

As we understand petitioner's position, he does not deny that by reporting to his local board and thereafter to the Civilian Public Service Camp to which he was assigned, as he was directed by the order of his local board, he became a member of the camp and was subject to the jurisdiction of the camp director. Indeed, he relies upon this

---

[3] See, concerning the establishment of the camps, their functions, their membership, etc., the annual reports of the Director of Selective Service. *Selective Service in Peacetime*, 1940–1941, pp. 185–201; *Selective Service in Wartime*, 1941–1942, pp. 252–272; *Selective Service as the Tide of War Turns*, 1943–1944, pp. 177–190.

[4] Attacks on the Civilian Public Service Camp System as being in violation of the Fifth and Thirteenth Amendments and as being unauthorized by the Selective Training and Service Act have been uniformly unsuccessful. *Roodenko* v. *United States*, 147 F. 2d 752 (C. C. A. 10), certiorari denied, 324 U. S. 860; *Kramer* v. *United States*, 147 F. 2d 756 (C. C. A. 6), certiorari denied, 324 U. S. 878; *Brooks* v. *United States*, 147 F. 2d 134 (C. C. A. 2), certiorari denied, 324 U. S. 878; *United States ex rel Zucker* v. *Osborne*, 147 F. 2d 135 (C. C. A. 2), certiorari denied, June 18, 1945; see also the Briefs for the United States in Opposition in *Gormly* v. *United States*, No. 220, October Term, 1943; *Kramer* v. *United States*, No. 1034, October Term, 1944; *Roodenko* v. *United States*, No. 947, October Term, 1944.

fact to demonstrate that he indisputably completed the administrative process. Notwithstanding the fact that the parties thus are not in dispute as to this material proposition, we deem it advisable to describe the procedural steps by which petitioner's status changed from that of a registrant subject to the jurisdiction of his local board to that of a "campee" under the jurisdiction of the camp director and subject to the duties imposed upon "campees" by the selective service regulations. We do so particularly with a view to noting what we believe to be material differences in the selective service procedure applicable to a registrant ordered to report for induction into the armed forces and that applicable to one ordered to report for work of national importance, and also with a view to noting the respects in which the procedure which applies to this case differs from that which was applicable to *Falbo's* case.

If a registrant is classified IV-E (conscientious objector to both combatant and noncombatant military service), the procedure, as it existed when petitioner was ordered to report, by which he becomes a member of a Civilian Public Service Camp is as follows: When the registrant's order number is reached in the process of selecting registrants to report for induction into the armed forces, he is summoned for a final-type preinduction physical examination in the same manner

as that conducted for men selected for military service (Reg. 629.1–629.2).[5] If the report of the examination indicates that he is physically and mentally qualified for service, he is issued a Certificate of Fitness (Reg. 629.32). It is after this point that the procedure relating to a registrant classified IV–E differs from that relating to a registrant classified I–A. In the case of the latter, the local board thereafter orders him to report for induction. When he reports to the local board he is transported to the induction station where he is again physically examined, and if he is found acceptable he undergoes the induction ceremony (see Brief for the United States, p. 14, in the *Smith* case, No. 66).

In the case of a registrant classified IV–E, when he receives his Certificate of Fitness his final acceptability has been ascertained. Thereafter, he is assigned to a Civilian Public Service Camp by the Director of Selective Service (Reg. 652.1–652.2). The local board then issues its Order to Report for Work of National Importance, at which point it becomes the registrant's duty "to comply therewith, to report to the camp at the time and place designated therein, and to thereafter perform work of national importance under civilian direction for the period, at the place, and

[5] The text of each of the provisions of the Selective Service Regulations to which reference is made is set forth in Appendix B, *infra*, pp. 38–52.

in the manner provided by law" (Reg. 652.11). As soon as the registrant leaves his local board en route to the camp, he is "under the jurisdiction of the camp to which he is assigned" (Reg. 652.13), and if he fails to report to the camp or if he reports and thereafter absents himself from the camp without authority he is a "deserter" (Regs. 653.12, 691.17 (a) (c)). If the registrant reports to the camp, he is accepted by the camp director, who is required to accept all registrants who are assigned to his camp. During the registrant's first few days at camp he receives a routine examination by the camp doctor, but the outcome of the examination bears no relation to the registrant's acceptance at the camp (Reg. 653.11 (c)).[5] It is in this latter respect that the procedure differs from that which prevailed at the time of *Falbo's* case. At that time it was possible for a registrant to be rejected upon examination at the camp (see 320 U. S. at

[5] We are unable to agree with petitioner (Br. 17) that it is necessary for a registrant to undergo the physical examination at the camp "in order to finalize and complete his acceptance at the camp." Since every registrant who has passed his preinduction physical examination and is assigned to a camp by the Director of Selective Service must be accepted at the camp (Reg. 653.11 (c)), it is plain that the examination at the camp is not a part of the process of determining the registrant's acceptability. Indeed, in petitioner's case, he was accepted at the camp several days before he was examined by the camp doctor (see fn. 8, p. 17, and pp. 53–58, *infra*).

553) and the procedure thus paralleled the procedure for inducting men into the armed forces.[7]

Unlike the procedure which prevails for registrants going into the armed forces (see *Billings* v. *Truesdell*, 321 U. S. 542, 553–554), in the case of a registrant assigned to a Civilian Public Service Camp there is no induction process. The reason for the difference in procedure may be found in the fact that only a registrant who has claimed exemption from military service because he is conscientiously opposed to all war is classified IV–E and assigned to a camp. Section 5 (g) of the Act requires that any person "claiming such exemption" shall "be assigned to work of national importance." Since by asserting the claim the registrant necessarily acquiesces in his assignment to work of national importance, there is no occasion for an induction ceremony in which he will be able to choose between submitting to work of national importance and defying the Act.

As we have pointed out, the registrant becomes subject to camp jurisdiction as soon as he leaves his local board en route to the camp. Upon arrival at camp he is in all cases accepted by the

---

[7] We have set forth in Appendix C, *infra*, pp. 53–58, a summary, prepared by the Selective Service System, of the historical background of Section 653.11 (c) of the Selective Service Regulations, which sets out the text of the provision at the time of *Falbo's* case and the present language of the provision, and which explains the reasons for the change in the procedure in this respect.

camp director, who is required to note that fact on DSS Form 221, the report of the preinduction physical examination which is forwarded by the local board to the camp (Reg. 653.11 (c)),[8] and he thereafter is subject to the duties imposed on all members of the camp (Reg. 653.12).

The facts set forth in the Statement, *supra*, pp. 3–6, demonstrate that this procedure was followed in petitioner's case. After petitioner was classified IV–E, he underwent a preinduction physical examination and a final determination of acceptability was made. Thereafter, he was assigned to the Hill City, South Dakota, Civilian Public Service Camp by the Director of Selective Service (see Ex. 9), and on August 8, 1944, an order was mailed to him notifying him that he had been accepted for work of national importance and directing him to report to his local board on August 21, 1944, for transportation to the camp. He reported to the board and thereafter entrained for the camp. Under the Selective Service Regulations (Sec. 652.13), as soon as petitioner left the local board's office, he became subject to the jurisdiction of the camp. He ar-

[8] We have lodged with the Clerk of the Court a photostatic copy of DSS 221, which is a part of the records of the Selective Service System, and which recites that petitioner was accepted for work of national importance at the Hill City, South Dakota, Camp on August 23, 1944, the day on which he arrived at camp. Nothing in the record supports petitioner's statement (Br. 20) that he was not accepted at the camp until August 28, 1944.

rived at the camp on August 23, 1944, and was immediately "enrolled" (R. 30, 33; Ex. 10, 21, 23, 25; *supra*, p. 17). During the next few days he underwent a conditioning period and on August 28 he was physically examined by the camp doctor (see Ex. 22). It was at this point that petitioner wilfully deserted from the camp.

In our view, there can be no question under the regulations that when petitioner deserted from the camp he was subject to the jurisdiction of the camp and to the duties imposed on all members of the camp.

2. *Petitioner's duties.*—Throughout his brief petitioner argues this case as though he were charged with having failed to report for work of national importance in violation of the order of his local board, and to support his argument he relies upon the considerations advanced by the defendants in the *Smith* and *Estep* cases. Resort to the indictment demonstrates, however, that he has misconceived the nature of the prosecution. Rather than charging a failure to comply with an Order to Report for Work of National Importance, as petitioner seems to assume, the indictment recites facts showing that petitioner became a member of the Civilian Public Service Camp and it then alleges (R. 3) that he did

> unlawfully, wilfully, knowingly and feloniously fail and neglect to abide by the rules and regulations prescribed and established by the Director of the Selective Service

> System for the conduct of registrants assigned to civilian work of national importance in such Civilian Public Service Camps, in that he, the said defendant, did then and there, to wit: on or about the twenty-eighth day of August 1944, without authority and in violation of said rules and regulations leave and absent himself from said camp with intent on the part of him, the said defendant, to remain permanently away from said camp; * * * said defendant did then and there unlawfully, wilfully, knowingly, and feloniously, fail, neglect, and refuse to remain at said Civilian Public Service Camp No. 57 until lawfully transferred or released therefrom, * * *.

The indictment thus charges a failure to perform a duty different from the duty to comply with an order of the local board, as was charged in the *Falbo, Smith* and *Estep* cases; it charges that petitioner failed to perform his duty of remaining at the camp and working there until he was released. The Findings of Fact (R. 21–22) entered by the trial judge recognize this, for they recite that petitioner, in deserting from the camp, violated, in particular, Section 653.12 of the Selective Service Regulations. This provision defines the duty of a registrant classified IV–E and assigned to a Civilian Public Service Camp, as follows:

> Assignees shall report to the camp to which they are assigned; remain therein

> until released or transferred elsewhere by proper authority, except when performing assigned duties or on authorized missions or leave outside of camp; perform their assigned duties promptly and efficiently; keep their persons, clothing, equipment, and quarters neat and clean; conserve and protect Government property; conduct themselves both in and outside of the camp so as to bring no discredit to the individual or the organization; and comply with such camp rules as may be prescribed or such directions as may be issued from time to time by the Director of Selective Service.

See also Sections 652.11 (a), 652.14 and 691.17.

Since it is not open to dispute that petitioner was assigned to a Civilian Public Service Camp and was accepted by the camp director as a member of the camp, we submit that petitioner was obliged to comply with the duties imposed upon him by Section 653.12. This obligation, we think, is not conditioned on his having been properly classified IV–E, but instead extends to every registrant who becomes a member of a Civilian Public Service Camp in the course of the operation of the Selective Service System. The language of Section 653.12 is all inclusive and we think it correctly expresses the policy of the Selective Service System.

From the beginning, it has been the policy of the Selective Service System, as well as the Department of Justice, that registrants under the

Selective Training and Service Act are obliged to comply with the Act and regulations until they are lawfully relieved of that obligation. For that reason, we have urged that a registrant who fails to report for induction or who fails to submit to induction may not excuse his failure by showing that he was improperly classified. His remedy, we have argued, is to test his classification by complying with the order of the local board and then by resorting to habeas corpus. Since the Selective Service Regulations are the creation of the Director of Selective Service, it is thus to be expected that they should reflect this policy by requiring every "campee," regardless of his views as to the merits of his classification, to remain at the camp until he is lawfully released. Any other construction of Section 653.12 impels the anomalous conclusion that the consistent position of the Selective Service System that even a misclassified registrant must comply with the Act and regulations was not expressed in its regulations; it requires a construction which places the Director's regulations at war with the Director's policy.

Our view of petitioner's duty likewise finds support in other provisions of the Selective Service Regulations. We are advised by the Selective Service System that it is an established administrative practice that if a member of a camp believes that he was misclassified, he may request

the Director of Selective Service to intervene and to direct the local board to reopen his classification and consider the question anew.* Additionally, Section 691.17(d), relating to recalcitrant members of the camps, provides that if, after a registrant has become a member of a Civilian Public Service Camp, it appears that he may have been misclassified, the Director of Selective Service may take the necessary steps to have the classification reopened by the registrant's local board. Significantly, the Section provides further that if such a registrant fails to perform his duties at the camp, the Director "may report the assignee to the proper United States Attorney as a violator of the Selective Training and Service Act of 1940, as amended."

The policy, which the regulations reflect, that all registrants must comply with their duties under the Act and regulations until relieved of that obligation does not substantially prejudice the registrant. Since a registrant who has become a member of a Civilian Public Service Camp is subject to restraint by the camp director, he is always free to challenge the propriety of any

*At the time when petitioner was in the camp, Section 626.2 (b) provided that "After a registrant has left the local board for delivery pursuant to an order to Report for Work of National Importance (Form 50) the local board shall reopen and consider anew the classification of such registrant only upon the written request of the Director of Selective Service." This provision is presently found in Section 626.2–1 of the Regulations.

selective service action in an orderly manner by resorting to habeas corpus. See, *e. g., United States ex rel. Zucker* v. *Osborne,* 147 F. 2d 135 (C. C. A. 2), certiorari denied, June 18, 1945; *United States ex rel. Bodenstein* v. *Nichols,* 151 F. 2d 155 (C. C. A. 3). If he prevails, he is released without unnecessary delay. On the other hand, if he is unsuccessful, he remains in camp for the purpose of performing work of national importance, as the Act contemplates. Such a procedure does not unduly interfere with the orderly administration of the camp system and avoids the disadvantages of the procedure adopted by petitioner. The long delays incident to a criminal trial, during which the registrant performs no duties under the Act, are averted, and if the registrant is mistaken in his belief that he was misclassified, he is not convicted as a felon and sent to prison, where he performs no service under the Act.

Neither is the policy of the regulations novel. No one would suggest seriously that if petitioner had been inducted into the army he might lay down his arms and desert his post of duty because he had reason to believe that he should have been exempted from military service. Indeed, under the 1917 Act, which involved a somewhat different procedure, it was held that where the draft board which ordered a registrant to report had jurisdiction over him, defiance of the order constituted desertion even though the registrant was not

fairly heard by the draft board, for "Although based on irregular proceedings, it was not void. Until vacated, it was binding on the petitioner." *Ex Parte Romano,* 251 Fed. 762, 764 (D. Mass.); see also *Ex Parte Tinkoff,* 254 Fed. 912 (D. Mass.). Similarly, a registrant who was inducted could not thereafter desert and attack the validity of his induction upon court martial for desertion. *Ex Parte Kerekes,* 274 Fed. 870 (E. D. Mich.);[10] cf. *Ver Mehren* v. *Sirmyer,* 36 F. 2d 876 (C. C. A. 8), in which the Court concluded that the registrant had never been inducted. This same view is represented by an analogous line of cases involving minors who unlawfully enlisted in the armed forces without the consent of their parents. While it was held that the parents might procure the release of their sons from military service by resorting to habeas corpus, the courts recognized

---

[10] Under the 1917 Act, the Judge Advocate General repeatedly ruled that a plainly mistaken classification did not void the induction and, accordingly, the registrant was required to apply to the military for discharge. JAG 334.4, June 7, 1918; JAG 327.3, October 30, 1918, November 9, 1918. And an erroneous classification was held no defense in a court martial for desertion arising out of failure to report for induction. See C. M. 122312, Grant (1918) (Section 2238, Digest of Opinions, Judge Advocate General, Volume 1912-1930), in which it was stated—

"* * * While it is true there was no direct evidence that the accused was registered or classified, the order to entrain and proceed to camp is established beyond all doubt. The order imports rightfulness and verity as against any assault in these proceedings." C. M. 122330, Choroshen; C. M. 114991, Aniki.)

that until the enlisted men were discharged, they were required to perform military duties; it was held that if the enlisted man was confined by the military authorities on a charge cognizable by a military court, habeas corpus would not lie until he had served any sentence imposed by the military court. *In re Scott,* 144 Fed. 79 (C. C. A. 9); *In re Carver,* 142 Fed. 623 (D. Me.); *Dillingham* v. *Booker,* 163 Fed. 696, 698 (C. C. A. 4); *United States ex rel. Laikund* v. *Williford,* 220 Fed. 291 (C. C. A. 2); see also, Manual for Courts-Martial United States (1928), p. 199.

This same policy is manifest in 18 U. S. C. 753h, which requires a person confined in a penal institution "by virtue of any process issued under the laws of the United States" to remain in confinement until properly released, even though the judgment pursuant to which he is confined might be declared void if attacked in habeas corpus." See *Bayless* v. *United States,* 141 F. 2d 578 (C. C. A. 9), certiorari denied, 322 U. S. 748; *United*

---

[11] Petitioner (Br. 30) seeks to distinguish the jailbreaking cases on the theory that the prosecution is for violation of a statute prohibiting jailbreaking, while in this case the prosecution, in his view, is based "upon alleged defiance of an administrative order which is directly challenged in the proceedings." As we have shown, he misconceives the nature of this prosecution, for he is being prosecuted for having failed to perform the duties imposed on him by Section 653.12, duties which are not conditioned upon the validity of his selective service classification. Section 653.12 bears the same relationship to petitioner's case as does 18 U. S. C. 753h to the case of a jailbreaker.

States v. *Jerome,* 130 2d 514, 519 (C. C. A. 2), certiorari denied as to this point, 317 U. S. 606; *Aderhold* v. *Soileau,* 67 F. 2d 259 (C. C. A. 5). Likewise, as is pointed out in *Giese* v. *United States,* 143 F. 2d 633, 635 (App. D. C.), affirmed by an equally divided court, 323 U. S. 682:

> The law knows a number of situations in which, even in peacetime, the duty of the citizen to cooperate in effective law enforcement overrides his convenience. Thus, it is his duty to submit to arrest, upon a warrant valid on its face, even though the warrant may turn out later to be invalid. A citizen who resists arrest under such circumstances may subject himself to punishment for so doing, in spite of his complete innocence of the original accusation upon which the warrant was issued. So, also, one who is held upon a commitment, valid on its face, may be guilty of escape if he forces his way out of custody, even though the commitment, when properly challenged, may prove to be insufficient. Again, one who is a fugitive from a State in which he is unjustly accused of crime may, nevertheless, be subjected to extradition if the indictment and requisition are in proper form. And he may become guilty of a crime, under the federal law, merely by fleeing to another State to escape prosecution. * * *. In the present case, as in those used for comparison in this paragraph, there was legal process, valid on its face; namely, an order of appellant's local

board requiring him to report. In the present case, as in those used for comparison, a remedy was available—appropriate both as to time and purpose—to challenge the validity of the order. No more is necessary to satisfy the requirements of due process.

3. *The Government's position.*—Petitioner does not deny that he was a member of the Civilian Public Service Camp to which he had been assigned or that he deserted from it. His sole contention in this respect is that he had no duty to remain in camp because he was improperly classified by his local board. Assuming that a registrant who claims classification as a conscientious objector, as petitioner did, may thereafter challenge the propriety of his classification, it is our position that until the classification is vacated either administratively or by judicial order, the registrant is obliged to perform the duties imposed by the Selective Service Regulations on every person classified IV–E and assigned to a Civilian Public Service Camp. This, we think, is what the regulations require of the registrant as his part in the cooperative effort to wage war successfully. Since the duty defined by the regulations applies to all assignees at Civilian Public Service Camps and does not except from its reach a registrant who believes himself to have been misclassified, it was petitioner's duty to remain at the camp to which he was assigned and to perform

work of national importance. If he desired to challenge his classification, habeas corpus was an available and effective remedy. In the words of Mr. Justice Douglas, concurring in *Hirabayashi* v. *United States*, 320 U. S. 81, 109: "We need go no further here than to deny the individual the right to defy the law. It is sufficient to say that he cannot test in that way the validity of the orders as applied to him." Since petitioner's duty was to remain at the camp until he was lawfully released, it is no defense to urge that he should have been classified differently. For this reason, we think petitioner's tendered defense in the trial court was irrelevant and was properly rejected.

We are mindful of the fact that petitioner reported to the Civilian Public Service Camp to which he was assigned and then deserted from the camp because it was his belief that this was the appropriate procedure for testing the validity of his selective service classification. As we have shown, we think he was mistaken in the procedure which he adopted instead of applying for reclassification under the procedure outlined in Section 691.17 (d) of the regulations or for habeas corpus. Whatever may be the situation of a registrant who upon the final determination of his acceptability refuses to proceed further[10]—a question

[10] Petitioner would have been in this position if he had declined to proceed further after he had passed his preinduction physical examination and received a Certificate of Fitness from his local board.

which is now before the Court for decision in the *Smith* and *Estep* cases—petitioner is not within this category. By becoming a member of the camp he acquired new rights and duties and by deserting from the camp he purposely failed to perform those duties. In pursuing the course of conduct which he undertook petitioner assumed the risk that the legal advice upon which he relied was correct. If he was mistaken, his recourse is not to the courts, but to the clemency power of the President. "Mistaken notions about one's legal rights are not sufficient to bar prosecution for crime." *Williams* v. *North Carolina,* 325 U. S. 226, 238.

II

VENUE WAS PROPERLY LAID IN THE JUDICIAL DISTRICT IN WHICH THE CIVILIAN PUBLIC SERVICE CAMP WAS LOCATED

Relying upon *United States* v. *Johnson,* 323 U. S. 273, petitioner urges that he should have been prosecuted in the Western District of Arkansas, where his local board is located, rather than in the District of South Dakota in which the Civilian Public Service Camp is situated. In his view (Br. —), "South Dakota was not the district where the controversy arose or where the order on which the indictment is based was issued."

The Selective Training and Service Act contains no venue provision. Accordingly, the venue of the offense charged against petitioner must

be fixed at the place where the criminal act occurred. Constitution, Art. III, § 2, cl. 3; *Haas* v. *Henkel*, 216 U. S. 462, 473. As we have shown, the offense charged against petitioner is that he knowingly refused to perform a duty required of him by the Selective Service Regulations, in that he deserted from the Civilian Public Service Camp in which he was enrolled. The camp is located in the District of South Dakota, and petitioner's offense occurred in that district when he departed from the camp without authorization. Since the act for which petitioner was indicted and convicted occurred in the district of the trial court, there can be no question that venue was properly laid in that district.

Petitioner, we think, fails to distinguish this case from those cases where a registrant is prosecuted for having failed to report for induction as ordered by his local board.[11] We agree that such a prosecution must be in the district in which the local board is located, for the offense

[11] In *United States* v. *Anderson*, No. 447, on direct appeal to this Court from the United States District Court for the Western District of Washington, the question is whether a registrant charged with having failed to submit to induction may be prosecuted in the district in which the induction station is located and in which the failure occurred or whether he should be prosecuted in the district in which his local board is located. The district court, we believe erroneously, thought that the Act and regulations contemplated that the prosecution should be had in the district in which the local board is located (60 F. Supp. 649).

is the failure to report to the local board and is, thus, committed in the district in which the local board is located. *United States* v. *Van Den Berg*, 139 F. 2d 654 (C. C. A. 7); *Humes* v. *Pescor*, 148 F. 2d 127 (C. C. A. 8); cf. *Rumely* v. *McCarthy*, 250 U. S. 283, 289. *United States* v. *Johnson, supra,* resembles this case only in the fact that a question of venue is involved in both. Since, as we have shown, the only act charged by the indictment to be unlawful occurred in South Dakota there is no question here, as there was in the *Johnson* case, of ascertaining venue for an offense which extends beyond the confines of one judicial district.

Apart from the technical legal considerations involved, the record shows that petitioner lived in Mississippi until 1940 (R. 59–60; that he was in Arkansas when he registered under the Selective Training and Service Act (R. 63–64); that he thereafter lived in Oklahoma for several months (R. 64–65); that he was in Illinois when he was ordered to report for work of national importance (R. 65); and that he was in Indiana when he was apprehended by the F. B. I. (R. 40, 65). On the basis of these facts, petitioner is hardly in a position to argue, as he does (Br. 38, 42), that only by laying venue in Arkansas can he be assured of a fair trial at the place of his home.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the circuit court of appeals should be affirmed.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
WALTER J. CUMMINGS, JR.,
Attorneys.

DECEMBER 1945.

APPENDIX A

STATUTORY PROVISIONS INVOLVED

The Selective Training and Service Act of 1940 as amended (Acts of September 16, 1940, c. 720, 54 Stat. 885; August 18, 1941, c. 362, 55 Stat. 626; December 20, 1941, c. 602, 55 Stat. 844; November 13, 1942, c. 638, 56 Stat. 1018, 50 U. S. C. Appendix 301–318) provided, in part, as follows:

> SEC. 5. " * * (g) Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction. Any such person claiming such exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board provided for in section 10 (a)

(2). Upon the filing of such appeal with the appeal board, the appeal board shall forthwith refer the matter to the Department of Justice for inquiry and hearing by the Department or the proper agency thereof. After appropriate inquiry by such agency, a hearing shall be held by the Department of Justice with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board (1) that if the objector is inducted into the land or naval forces under this Act, he shall be assigned to noncombatant service as defined by the President, or (2) that if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be assigned to work of national importance under civilian direction. If after such hearing the Department finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall give consideration to but shall not be bound to follow the recommendation of the Department of Justice together with the record on appeal from the local board in making its decision. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

* * * * *

SEC. 10. (a) The President is authorized

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. There shall be created one or more local boards in each county or political subdivision corresponding thereto of each State, Territory, and the District of Columbia. Each local board shall consist of three or more members to be appointed by the President, from recommendations made by the respective Governors or comparable executive officials. No member of any such local board shall be a member of the land or naval forces of the United States, but each member of any such local board shall be a civilian who is a citizen of the United States residing in the country or political subdivision corresponding thereto in which such local board has jurisdiction under rules and regulations prescribed by the President. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The de-

cisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe. * * *

* * * * *

SEC. 11. Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration

of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or, if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act.

APPENDIX B

SELECTIVE SERVICE REGULATIONS

605.51 *Forms made part of regulations.*—All forms and revisions thereof referred to in these or any new or additional regulations, or in any amendment to these or such new or additional regulations, whether heretofore or hereafter adopted, and all forms and revisions thereof heretofore or hereafter prescribed by the Director of Selective Service shall be and become a part of these regulations in the same manner as if each form, each provision therein, and each revision thereof were set forth herein in full. Whenever in any form or the instructions printed thereon, whether heretofore or hereafter adopted or prescribed, any person shall be instructed or required to perform any act in connection therewith, such person is hereby charged with the duty of promptly and completely complying with such instruction or requirement.

* * * * *

621.1 *Mailing questionnaires.*—(a) The local board shall mail a Selective Service Questionnaire (Form 40) to each registrant in strict accordance with the order numbers, from the smallest to the largest. Selective Service Questionnaires (Form 40) shall be mailed as rapidly as possible, consistent with the ability of the local board to give them prompt consideration upon their return.

* * * * *

621.3 *Special Form for Conscientious Objector.*—A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on a Special Form for Conscientious Objectors (Form 47) which, when filed, shall become a part of his Selective Service Questionnaire (Form 40). The local board, upon request, shall furnish to any person claiming to be a conscientious objector a copy of such Special Form for Conscientious Objector (Form 47).

* * * * *

622.44 *Class IV–D: Minister of religion or divinity student.*—(a) In Class IV–D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

* * * * *

(c) A "duly ordained minister of religion" is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rite, and ceremonies in public worship; and who customarily performs those duties.

* * * * *

622.51 *Class IV–E: Conscientious objector available for, assigned to, or released from work of national importance.*—(a) In Class IV–E shall be placed every registrant who would have been classified in Class I–A but for the fact that he

has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to both combatant and noncombatant military service.

(b) Upon being advised by the Director of Selective Service that a registrant who was inducted into the land or naval forces for military service will be discharged because of conscientious objections which make him unadaptable to military service, the local board shall change such registrant's classification and place him in Class IV–E. The Director of Selective Service shall assign such registrant to work of national importance under civilian direction.

(c) A registrant placed in Class IV–E who is assigned to and reports for work of national importance under civilian direction shall be retained in Class IV–E unless his reclassification into some other class is specifically authorized by the Director of Selective Service.

(d) A registrant placed in Class IV–E who has been separated other than by death from work of national importance under civilian direction shall be retained in Class IV–E unless his reclassification into some other class is specifically authorized by the Director. Each such registrant shall be identified in the manner provided in section 622.86–2, and shall not be available for reassignment to work of national importance under civilian direction without the specific authorization of the Director of Selective Service.

(e) A registrant placed in Class IV–E who has been separated by death from work of national

importance under civilian direction shall be retained in Class IV–E. (Each such registrant shall be identified in the manner provided in section 622.86.)

* * * * *

627.25 *Special provisions where appeal involves claim that registrant is a conscientious objector.*—(a) If an appeal involves the question of whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the board of appeal shall first determine whether the registrant should be classified in one of the classes set forth in section 623.21, in the order set forth, and if it so determines, it shall place such registrant in such class. If the board of appeal does not determine that such registrant belongs in one of such classes, it shall transmit the entire file to the United States district attorney for the judicial district in which the local board of the registrant is located for the purpose of securing an advisory recommendation of the Department of Justice, provided that in a case in which the local board has classified the registrant in Class IV–E or in a case in which the registrant has claimed objection to combatant service only and the local board has classified him in Class I–A–O, the board of appeal may affirm the classification of the local board, without referring the case to the Department of Justice. No registrant's file shall be forwarded to the United States district attorney by any board of appeal and any file so forwarded shall be returned, unless in the "Minutes of Other Actions" on the Selective Service Questionnaire (Form 40) the

record shows and the letter of transmittal states that the board of appeal reviewed the file and determined that the registrant should not be classified in one of the classes set forth in section 623.21.

(b) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the board of appeal (1) that if the registrant is inducted into the land or naval forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall be assigned to work of national importance under civilian direction. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the board of appeal that such objections be not sustained.

(c) Upon receipt of the report of the Department of Justice, the board of appeal shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice.

* * * * *

629.1 *Who will be examined.*—(a) Every registrant, before he is ordered to report for induction, shall be given a preinduction physical

examination under the provisions of this part unless (1) he signs a Request for Immediate Induction (Form 219) or (2) he is a delinquent, * * *.

* * * * *

629.2 *Order to report for preinduction physical examination.*—(a) In accordance with instructions of the Director of Selective Service, the State Director of Selective Service will issue to each local board a Call—Preinduction Physical Examination (Form 224)—specifying thereon the number of specified registrants to be delivered for preinduction physical examination and the time and place fixed for such delivery.

(b) The local board shall mail an Order to Report—Preinduction Physical Examination (Form 215) to a sufficient number of registrants who have been classified in Class I–A or Class I–A–O under the provisions of section 623.21 to fill each Call—Preinduction Physical Examination (Form 224) which it receives. In filling such calls, the local board, as far as practicable, shall first select volunteers, then nonfathers, and finally fathers, and within each group shall make such selections in sequence of order numbers without regard to whether the registrant has requested or will request a personal appearance before the local board and without regard to whether an appeal has been or will be taken.

(c) The local board shall also mail an Order to Report—Preinduction Physical Examination (Form 215) to each registrant classified in Class IV–E when his order number is reached (without regard to whether he has requested or will request a personal appearance before the local

board and without regard to whether an appeal has been or will be taken) in the process of ordering Class I–A and Class I–A–O registrants to report for preinduction physical examination under the provisions of paragraph (b) of this section.

(d) The local board may also mail an Order to Report—Preinduction Physical Examination (Form 215) to any registrant (1) who is classified in a class other than Class I–A, Class I–A–O, or Class IV–E, if it determines that his induction will shortly occur, or (2) when directed to do so by the Director of Selective Service or the State Director of Selective Service.

(e) At the time the local board prepares the original Order to Report—Preinduction Physical Examination (Form 215), it shall make a copy of such form and shall file the copy in the registrant's Cover Sheet (Form 53).

* * * * *

629.32 *Mailing Certificate of Fitness to registrant accepted or rejected.*—When a Certificate of Fitness (Form 218) indicates that a registrant has been accepted for the Army or the Navy or that a registrant has been rejected, the local board shall immediately mail the original of such certificate to the registrant and shall record the date of mailing of such Certificate of Fitness (Form 218) on the registrant's Selective Service Questionnaire (Form 40).

* * * * *

652.1 *Report of conscientious objector to Director of Selective Service.*—(a) When a registrant is classified in Class IV–E and his

classification is not under consideration on appearance, reopening, or appeal, and the time in which he is entitled to request an appearance or take an appeal has expired, and his order number is reached in the process of selecting Class I–A and Class I–A–O registrants to report for induction, the local board shall immediately notify the Director of Selective Service on Conscientious Objector Report (Form 48) that the registrant is available for assignment to work of national importance under civilian direction.

652.2 *Assignment by Director of Selective Service.*—(a) The Director of Selective Service, upon receipt of (1) the Conscientious Objector Report (Form 48) for a registrant or (2) information from the land or naval forces that a registrant who has been inducted into the land or naval forces will be discharged because of conscientious objections which make him unadaptable to military service, shall assign the registrant to a camp. Such assignment will be made on an Assignment to Work of National Importance (Form 49), which shall be made out in triplicate. The original and one copy will be mailed to the State Director of Selective Service, who shall forward the original to the local board designated therein and file the copy. If the Assignment to Work of National Importance (Form 49) is sent to a local board other than the registrant's local board, the registrant's local board will be notified of such action so that appropriate notations may be made in its records.

* * * * *

652.11 *Preparation and distribution of Order to Report; delinquency of IV–E registrants.*—

(a) Upon receipt of an Assignment to Work of National Importance (Form 49) for a registrant, the local board shall prepare six copies of an Order to Report for Work of National Importance (Form 50). The local board shall then proceed as follows:

(1) In the case of a registrant classified in Class IV–E: Mail the original of the Order to Report for Work of National Importance (Form 50) to the registrant at least 10 days before the date set for him to report. At the time the registrant leaves the local board for the camp, mail the remaining five copies of the Order to Report for Work of National Importance (Form 50), together with the Original and the First Copy of the registrant's Report of Physical Examination and Induction (Form 221), to the camp directors, and retain the Second Copy of the registrant's Report of Physical Examination and Induction (Form 221) in the registrant's Cover Sheet (Form 53).

(2) In the case of a registrant discharged from the land or naval forces because of conscientious objections which make him unadaptable for military service: Mail or deliver to the registrant before the time set for him to report, the original of the Order to Report for Work of National Importance (Form 50). At the time the registrant leaves the local board for the camp, mail the remaining five copies of the Order to Report for Work of National Importance (Form 50), together with a letter explaining the circumstances under which the registrant was ordered to report for work of national importance, to the camp director at such camp. No other records shall be forwarded to the camp director with such registrant.

When an Order to Report for Work of National Importance (Form 50) is mailed or delivered to a registrant as hereinbefore provided, it shall be his duty to comply therewith, to report to the camp at the time and place designated therein, and to thereafter perform work of national importance under civilian direction for the period, at the place, and in the manner provided by law.

652.12 *Transportation to camp.*—(a) When a registrant in Class IV–E reports to the local board for transportation to a camp for work of national importance under civilian direction, the local board shall prepare the necessary Government Requests for Transportation (Standard Form No. 1030) and Government Request for Meals and Lodgings for Civilian Registrants (Form 256) for use by the registrant between the local board and the camp. Except as otherwise provided herein, the local board will follow the same procedure in delivering the registrant to work of national importance under civilian direction as is followed in the case of a registrant delivered for induction into the land or naval forces.

* * * * *

652.13 *Jurisdiction of local board while registrant is engaged in work of national importance.*—A registrant in Class IV–E who has reported for work of national importance pursuant to this part shall be retained in Class IV–E by the local board. Such registrant after he has left the local board in accordance with section 652.12 for work of national importance under civilian direction is under the jurisdiction of the camp to which he is assigned. The local board

shall take no further steps with regard to such registrant without instructions from the Director of Selective Service, but should report any information to the Director of Selective Service which might affect the registrant's status.

* * * * *

653.1 *Work projects.*—(a) The Director of Selective Service is authorized to establish, designate, or determine work of national importance under civilian direction. He may establish, designate, or determine, by an appropriate order, projects which he deems to be work of national importance. Such projects will be identified by number and may be referred to as "civilian public service camps."

(b) Each work project will be under the civilian direction of the United States Department of Agriculture, United States Department of the Interior, or such other Federal, State, or local governmental or private agency as may be designated by the Director of Selective Service. Each such agency will hereinafter be referred to as the "technical agency."

(c) The responsibility and authority for supervision and control over all projects is vested in the Director of Selective Service.

653.2 *Camps.*—(a) The Director of Selective Service may arrange for the establishment of a camp at any project designated as work of national importance under civilian direction.

(b) Government-operated camps may be established in which the work of national importance and camp operations will both be under the civilian direction of a technical agency using funds provided by the Selective Service System

and operating under such camp rules as may be prescribed by the Director of Selective Service.

(c) The Director of Selective Service may authorize the National Service Board for Religious Objectors, a voluntary unincorporated association of religious organizations, to operate camps. The work project for assignees of such camps will be under the civilian direction of a technical agency. Such camps and work projects shall be operated under such camp rules as may be prescribed by the Director of Selective Service.

* * * * *

653.5 *Communications concerning assignees.*—In no event will the camp director communicate with the local board or the State Director of Selective Service concerning assignees, but all such communications shall be directed to the Director of Selective Service, Washington, D. C.

* * * * *

653.11 *Reception at camps.*[1]—(a) When the assignee has reported to camp, the camp director shall complete the Order to Report for Work of National Importance (Form 50). Four copies of the completed Order to Report for Work of National Importance (Form 50) shall be sent to the Director of Selective Service; one copy will be retained by the camp director. The Director of Selective Service will forward two copies of the Order to Report for Work of National Importance (Form 50) to the appropriate State Director of Selective Service, who will retain one copy for his files and mail the other copy to the

[1] See Appendix C, *infra*, pp 51–55.

local board for filing in the registrant's Cover Sheet (Form 53).

(b) As soon as possible after the assignee has reported to camp, the camp physician shall give him a physical examination and shall determine whether there has been any change in the assignee's physical or mental condition since his preinduction physical examination. If a camp physician is not available, the camp director, to the extent that he is capable of doing so, shall, by observing and questioning the assignee, make such determination. The camp physician or the camp director, as the case may be, shall, on the bottom of page 4 of the Original and First Copy of the Report of Physical Examination and Induction (Form 221), make a record of such determination.

(c) Irrespective of the determination which is made as a result of the examination of an assignee made under the provisions of paragraph (b) of this section, the camp director shall, on the bottom of page 4 of the Original and First Copy of the Report of Physical Examination and Induction (Form 221), place a statement that a registrant is accepted for work of national importance at the civilian public service camp to which the registrant has been assigned. The statement shall specify the date and place of such acceptance and shall be signed by the camp director who shall retain the First Copy of the Report of Physical Examination and Induction (Form 221) and shall forward the Original to the Director of Selective Service.

(d) Upon receiving notice that a registrant has been accepted for work of national importance,

the local board shall not change his classification but shall note the fact of his acceptance for such work in the Classification Record (Form 100).

653.12 *Duties.*—Assignees shall report to the camp to which they are assigned; remain therein until released or transferred elsewhere by proper authority, except when performing assigned duties or on authorized missions or leave outside of camp; perform their assigned duties promptly and efficiently; keep their persons, clothing, equipment, and quarters neat and clean; conserve and protect Government property; conduct themselves both in and outside of the camp so as to bring no discredit to the individual or the organization; and comply with such camp rules as may be prescribed or such directions as may be issued from time to time by the Director of Selective Service.

* * * * *

691.17 *Discipline.*—(a) An assignee who fails to perform the duties outlined in § 653.12 or whose conduct amounts to a violation of local, State, or Federal criminal statutes or to violation of these regulations or camp rules issued under the authority of these regulations; or to a violation of furlough, liberty, or leave regulations, will be subject to such restriction of privileges, extra duty, reclassification under the Selective Service Regulations, or prosecution under the Selective Training and Service Act of 1940, as amended, as the case may warrant.

* * * * *

(c) If, after reporting to camp, an assignee departs or absents himself from the camp without authority, the Director of Selective Service

will be notified not later than the 11th day following such departure or absence. The Director of Selective Service may take the necessary steps to report the assignee to the proper United States Attorney as a violator of the Selective Training and Service Act of 1940, as amended. In addition, forfeiture of 3 days of furlough time for each day of unauthorized absence is mandatory.

(d) Refusal to work or perform other assigned duties, counseling or inciting others to refuse to work or perform assigned duties, or failure to abide by the rules and regulations promulgated by the camp director or the Director of Selective Service constitutes a violation of these regulations. A full and immediate report of any violation of such rules and these regulations will be made to the Director of Selective Service through regular channels. If the reported conduct indicates that the assignee may have been improperly classified, the Director of Selective Service may take the necessary steps to submit the information to the assignee's local board with a request that the assignee's case be reopened and his classification considered anew under the Selective Service Regulations or the Director of Selective Service may report the assignee to the proper United States Attorney as a violator of the Selective Training and Service Act of 1940, as amended.

APPENDIX C

DECEMBER 14, 1945.

The Honorable TOM C. CLARK
The Attorney General
Department of Justice
Washington, D. C.

(Attention: Mr. Irving Shapiro.)

DEAR SIR: In response to your request that you be furnished the historical background of paragraph (c) of section 653.11 of the Selective Service Regulations, you are advised as follows:

From March 16, 1942, until February 2, 1944, the mentioned paragraph (c) read as follows:

> If the assignee indicates that his physical condition has changed since his final type physical examination for registrants in Class IV–E, the camp physician shall examine him with reference thereto. If the assignee is not accepted for work of national importance, the Camp Director will indicate the reason therefor, and the assignee, pending instructions from the Director of Selective Service will be retained in the camp or hospitalized when necessary.

The above language was provided by Amendment No. 40, effective March 16, 1942 (7 F. R. 2093).

During the period between March 16, 1942, and January 10, 1944, there was no procedure for a preinduction physical examination for registrants

inducted into the armed forces. By Amendment No. 29, effective March 16, 1942 (7 F. R. 2091), the previous procedure of giving a physical examination by the armed forces prior to induction was discontinued. After March 16, 1942, registrants were forwarded to the induction station for their final armed forces physical examination, and if found acceptable by the armed forces, inducted at that time and simultaneously made members of the enlisted reserve and given orders to report seven (7) days later at a reception center.

Section 5 of Public Law 197, 78th Congress, approved December 5, 1943, made specific mandatory provisions for preinduction physical examinations for individuals.[2] This was translated administratively into a plan of mass preinduction examinations.

---

[2] The statute provided in this respect as follows:

"Any registrant within the categories herein defined when it appears that his induction will shortly occur shall, upon request, be ordered by his local board in accordance with schedules authorized by the Secretary of War, the Secretary of the Navy, and the Director of Selective Service, to any regularly established induction station for a preinduction physical examination, subject to reexaminations.

"The commanding officer of such induction station where such physical examination is conducted under this provision shall issue to the registrant a certificate showing his physical fitness or lack thereof, and this examination shall be accepted by the local board, subject to periodic reexamination. Those registrants who are classified as 1-A at the time of such physical examination and who are found physically qualified for military service as a result thereof, shall remain so classified and report for induction in regular order."

By Amendment No. 200 (9 F. R. 400–442), effective January 10, 1944, the present procedure for preinduction physical examination was established. Section 629.1 of Amendment No. 200 contained the following provision:

> (a) Every registrant before he is ordered to report for induction, shall be given a preinduction physical examination under the provisions of this part unless; (1) he signs a Request for Immediate Induction (Form 219), or (2) he is delinquent. * * *

The procedure for a preinduction physical examination by the armed forces was operative for conscientious objectors as well as registrants to be inducted into the armed forces. As a consequence of the new preinduction physical examination procedure, section 653.11 was amended by Amendment No. 210 (9 F. R. 1416), effective February 2, 1944, to read as follows:

> (a) When the assignee has reported to camp, the camp director shall complete the Order to Report for Work of National Importance (Form 50). Four copies of the completed Order to Report for Work of National Importance (Form 50) shall be sent to the Director of Selective Service; one copy will be retained by the camp director. The Director of Selective Service will forward two copies of the Order to Report for Work of National Importance (Form 50) to the appropriate State Director of Selective Service, who will retain one copy for his files and mail the other copy to the local board for filing in the registrant's Cover Sheet (Form 53).
>
> (b) The camp director shall, on the bottom of page 4 of the Original and First

Copy of the Report of Physical Examination and Induction (Form 221), place a statement that a registrant is accepted for work of national importance at the civilian public service camp to which the registrant has been assigned. The statement shall specify the date and place of such acceptance and shall be signed by the camp director who shall retain the First Copy of the Report of Physical Examination and Induction (Form 221) and shall forward the Original to the Director of Selective Service.

(c) Upon receiving notice that a registrant has been accepted for work of national importance, the local board shall not change his classification but shall note the fact of his acceptance for such work in the Classification Record (Form 100).

(d) In the event an assignee does not report to the camp at the time prescribed in his Order to Report for Work of National Importance (Form 50) or pursuant to the instructions of the local board, the camp director will report such fact to the Director of Selective Service.

The language of the quoted Amendment No. 210 makes no provision for a physical examination of assignees when received at camps, and no such examination was therefore required. However, it was the practice at the camps to examine assignees in order to determine whether there had been any change in their physical condition since the preinduction physical examination.

Taking cognizance of the prevailing practice in the camps to examine assignees when received, Amendment No. 236 (9 F. R. 6207), effective June

7, 1944, amended paragraphs (b) and (c) of section 653.11 to read as follows:

(b) As soon as possible after the assignee has reported to camp, the camp physician shall give him a physical examination and shall determine whether there has been any change in the assignee's physical or mental condition since his preinduction physical examination. If a camp physician is not available, the camp director, to the extent that he is capable of doing so, shall, by observing and questioning the assignee, make such determination. The camp physician or the camp director, as the case may be, shall, on the bottom of page 4 of the Original and First Copy of the Report of Physical Examination and Induction (Form 221), make a record of such determination.

(c) Irrespective of the determination which is made as a result of the examination of an assignee made under the provisions of paragraph (b) of this section, the camp director shall, on the bottom of page 4 of the Original and First Copy of the Report of Physical Examination and Induction (Form 221), place a statement that a registrant is accepted for work of national importance at the civilian public service camp to which the registrant has been assigned. The statement shall specify the date and place of such acceptance and shall be signed by the camp director who shall retain the First Copy of the Report of Physical Examination and Induction (Form 221) and shall forward the Original to the Director of Selective Service.

Paragraphs (b) and (c) of section 653.11 were

amended to read in their present form by Amendment No. 290 (10 F. R. 2286), effective March 1, 1945.

We trust that the above information answers your inquiry.

For the Director:

(S) SMYSER F. NAGLE,
1st Lieutenant, JAGD,
Assistant Chief, Legal Division.

APPENDIX D

Executive Order 8675, 6 Fed. Reg. 831, issued February 6, 1941, and authorizing the Director of Selective Service to establish the Civilian Public Service Camp System provides, as follows:

> By virtue of the authority vested in me by the Selective Training and Service Act of 1940 (Pub. No. 783, 76th Cong.), it is hereby ordered as follows:
>
> 1. The Director of Selective Service, hereinafter called the Director, is authorized to establish, designate, or determine work of national importance under civilian direction to which may be assigned persons found under section 5 (g) of the Selective Training and Service Act of 1940 to be conscientiously opposed to participation in combatant and non-combatant training and service in the land or naval forces of the United States.
>
> 2. The Director shall make the necessary assignments to such work, shall determine the agencies, organizations, or individuals that may provide civilian direction thereof, and shall have general supervision and control over such work.
>
> 3. To the extent that he may deem necessary to carry out the provisions of this order, the Director may utilize the services of the Departments, officers, and agents of the United States; accept the services of officers and agents of the several states, territories, and the District of Columbia, and the subdivisions thereof; and accept

voluntary services of private organizations and individuals; and may obtain, by purchase, loan, or gift, equipment and supplies from Federal and other public agencies and private organizations and individuals, with or without advertising or formal contract.

4. The Director is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this order.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
February 6, 1941.

APPENDIX E

Order No. 57 of the Director of Selective Service (7 Fed. Reg. 7589) establishing Civilian Public Service Camp No. 57, to which petitioner was assigned, and providing for the performance of work of national importance at the camp provides, as follows:

HILL CITY PROJECT

Establishment for Conscientious Objectors

I, Lewis B. Hershey, Director of Selective Service, in accordance with the provisions of section 5 (g) of the Selective Training and Service Act of 1940 (54 Stat. 885) and pursuant to authorization and direction contained in Executive Order No. 8675 dated February 6, 1941, hereby designate the Hill City Project to be work of national importance, to be known as Civilian Public Service Camp No. 57. Said camp, located near Hill City, Pennington County, South Dakota, will be the base of operations for reclamation work in the State of South Dakota, and registrants under the Selective Training and Service Act of 1940, who have been classified by their local boards as conscientious objectors to both combatant and noncombatant military service and have been placed in Class IV–E, may be assigned to said camp in lieu of their induction for military service.

The work to be undertaken by the men assigned to Civilian Public Service Camp No. 57 will consist of the reclamation of

bridges, impounding dam, minor roads, clearing reservoir, and the fighting of forest fires, and shall be under the technical direction of the Bureau of Reclamation of the Department of the Interior insofar as concerns the planning and direction of the work program. The camp, insofar as camp management is concerned, will be under the direction of approved representatives of the National Service Board for Religious Objectors. Men shall be assigned to and retained in camp in accordance with the provisions of the Selective Training and Service Act of 1940 and regulations and orders promulgated thereunder. Administrative and directive control shall be under the Selective Service System through the Camp Operations Division of National Selective Service Headquarters.

LEWIS B. HERSHEY,
Director.

SEPTEMBER 23, 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942